IN THE

Supreme Court of the United States

OCTOBER TERM A. D. 1965

No. 348

EDWARD J. KRYSTOFORSKI,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent

REPLY TO BRIEF IN OPPOSITION

We ask the Court to consider our following comments on the Solicitor General's brief, in order to fully weigh the merits of our Petition for Certiorari.

First

He omits, under his Questions Presented, page 2, our question "b" with reference to the failure of the Court to disclose to the jury that the government had *voluntarily dismissed* the indictment as to co-defendant Gillard, but yet continued the testimony and references to Gillard's participation and overt acts in the alleged conspiracy. Not-

withstanding such dismissal the government proofs continuously throughout the record refer to Gillard as a defendant and co-conspirator. Not one syllable is found explaining his absence from the trial. The indictment and all references thereto continue to name Gillard as a co-defendant and a co-conspirator. In the course of the trial judge's charge (App. 63a) he refers to all the named defendants, *including Gillard.* The Court also read to the jury (App. 64a) the overt acts #1 and #2 which refer to Spaulding and Gillard only.

The indictment had been dismissed as to Gillard. He was no longer a defendant and if it was not error to apprise the jurors that Spaulding, Weikert and Slavens had pleaded guilty to the conspiracy then it would follow that those jurors are equally entitled to know the indictment had been dismissed as to defendant Gillard. The matter should work both ways. If a defendant is to get a fair trial, the jury must see both sides of the coin before it. A one-way street is manifestly unfair to those defendants who want their day in Court and request a trial of the charges, as guaranteed by the constitution. The jurors possibly assumed Gillard too had pleaded guilty.

Secondly

The Solicitor General is ignoring the proofs and the government's theory of the case at its inception. The testimony of Trowbridge and Agent Morrow (Morgan) show that the original offer of Slavens was to Trowbridge (App. 7a); he later contacted Slavens and expressed interest in the counterfeit money (App. 8a, 9a); that Trowbridge and Morgan were to buy $3,000.00 worth (App. 18a); that Spaulding and Gillard were strangers (App. 17a, 18a) who were buying the other $2,000.00 of the lot (App. 35a); Spaulding and Gillard went to Housey's Bar alone (App.

39a); Agent Morrow was shown the counterfeit note by Slavens (App. 40a) in the absence of the others.

What happened to the note? Morrow said Slavens admitted flushing it down the toilet (App. 44a). But Slavens testified (on page App. 51a):

> "A. Gave it to Spaulding and he left.
> Q. What was the purpose of Mr. Spaulding getting it?
> A. To see if he could raise two thousand more to buy counterfeit money."

(This note was never produced in Court.)

The United States Attorney filed two Complaints on the day of arrest—one charging Spaulding and Gillard with conspiracy to *purchase* and the other charging petitioner, Weikert, Wolke and Slavens with conspiracy to *sell* counterfeit money. This indicates their theory of two separate conspiracies.

CONCLUSION

Petitioner respectfully requests this Court to protect his substantial rights and to recognize the "plain errors" in this proceeding leading to his conviction and sentence, notwithstanding the delay in bringing such errors to attention of the lower Courts.

Respectfully submitted,

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